

STATEMENT FROM STATE ATTORNEY BILL CERVONE
RE: Complaint Concerning the Alachua County Commission
December 20, 2011

Earlier this year, and at the request of Sheriff Sadie Darnell, who had been approached by several concerned citizens, my office undertook an inquiry into allegations directed at the Alachua County Commission. In general, that complaint concerned possible violations of Chapter 286, commonly referred to as Florida's Sunshine Law, as will be outlined below. Having reviewed the various records, both audio and video, of the Commission meetings involved, as well as having reviewed numerous other documents, having researched the applicable law, and having consulted with the Office of the Attorney General, it is my conclusion that no crime has occurred. Because of the public interest in this matter, I am releasing this statement to address the issues involved.

The complaint centers on four specific dates, which are chronologically as follows. First, on December 7, 2010, an informal meeting of the County Commission was held, at which time it is alleged that the public discussion among Commissioners on a pending budget topic violated a legal prohibition against "crystallization of the vote" yet to be taken on that item, and that statements of the Chair were "evasive" and indicated that "there was something to hide." An additional allegation was made that another informal meeting of the County Commission on June 19, 2007, also involved crystallization of a pending vote, this on a county gas tax. Third, yet another informal meeting was held on April 17, 2007, this one allegedly involving the improper crystallization of a coming vote on land use issues. The final allegation was that an October 3, 2006, meeting was not noticed because the nature of the meeting changed while it was in progress.

There is nothing illegal or improper about informal meetings. They can serve a useful purpose in allowing free and full discussion of an issue without the time constraints that a formal Commission meeting might impose, and are completely permissible so long as properly noticed and held in a public setting. As to each of these specific informal meetings, there is no violation of law because of improper notice. Each meeting was, in fact, properly publically noticed. While it might be desirable that there be more precise information in these notices as to what might come up during a meeting, the law does not require specific notice of all items to be discussed at a public meeting, regardless of how the nature of that meeting might be labeled or characterized.

Each of the meetings in question was held in a completely open and public setting, with citizens and media able to attend. Each was recorded and resulted in minutes being taken. Each complied with the letter of the law as well as with applicable provisions of the County Commission's own rules and by-laws. All of the documentation, including the notices, is readily available from the County Commission. There is simply no basis upon which to find any violation of Chapter 286.

Secondary to Chapter 286, the complaint also alleges a possible violation of Chapter 838.022, Official Misconduct. Official Misconduct requires "corrupt intent to obtain a benefit...or to cause harm to another", among other elements, and can be committed in several ways. The first is by falsifying official records or documents. The second is by concealing, destroying or altering official records or documents. The third is by obstructing or preventing the communication of information regarding a felony involving or affecting the agency involved, in this instance the County Commission. None of these possibilities are present and there is a complete lack of evidence to support the conclusion that anything of that sort has happened. At best, there is a perception, possibly caused by a misunderstanding as to what Commissioners may do and say at informal meetings, that there must be some explanation for Commission action other than a simple disagreement as to the merits of the issues. Largely for the same reasons as outlined above and because there is no evidence to support such, there is no violation of Chapter 838.022 either.

These are not the opinions of my office alone. They are shared by Pat Gleason, an Assistant Attorney General and General Counsel to the Attorney General and perhaps the state's foremost expert on matters of this sort who is a 30+ year practitioner in this area. My office consulted with Ms. Gleason, who reviewed everything involved, not because of any ambiguity or uncertainty but because she is an independent expert in these matters. Her conclusion, as was mine, is that no criminal violation has occurred. It is worth noting that even if some criminal Sunshine Law violation existed, the Statute of Limitations applicable to such an offense would bar any action for the events of 2006 and 2007 anyhow, that statute having expired long before any complaint was made.

Much has been made by the complainants about the "crystallization" of votes at informal meetings. There is nothing illegal about any discussions between Commissioners at public, noticed meetings, even if those discussions reference pending votes. The concept of crystallization of a coming vote comes from a 1974 Florida Supreme Court case interpreting Chapter 286, in which the Court made the statement that "One purpose of the government in the sunshine law was to prevent ***at nonpublic meetings*** the crystallization of ***secret*** decisions... (emphasis added)." The case in which this observation was made is inapplicable to the issues raised by the complainants because it dealt with an appointed advisory board that was attempting to function outside of public view, and not a Commission itself that was acting in full public view. In no instance involved in this inquiry has the Alachua County Commission or any individual Commissioner demonstrably acted in a non-public setting, and neither has the Commission been shown to have made secret decisions. Secretly talking about and agreeing upon a vote is what is condemned by the concept of crystallization, not public discussions at noticed meetings during which there may be a give and take of opinion, input from citizens, and even a sharing of positions and intended or likely votes among Commissioners. Nothing precludes Commissioners from such public discussion and debate about their positions. Indeed, it would be foolish to suggest that Commissioners could not have a public dialogue about their positions and intentions on issues coming before them for a vote. Otherwise, government would be effectively paralyzed into inaction by the very bureaucratic red tape that citizens so often condemn, in addition to

which the public might never know the thinking behind decisions. What Commissioners may not do is have a private, secret discussion of that sort, and there has been no proof offered or discovered to suggest much less prove that that has happened. Supposition, perceived discomfort during debates, and, frankly, disagreement with the ultimate actions of the Commission do not substitute for proof of that sort of impropriety or illegality.

Inquiries of this sort serve an important public function. They point out the need for dialog and trust between citizens and their government officials. Dialog and trust do not require agreement, and one of the sad realities of our society is that disagreement all too often gives rise to an expression or belief of corrupt purpose when none is present. For its part, government should do everything it can to foster openness. For example and as a result of this inquiry, the Alachua County Commission has in fact changed certain procedures and policies in an attempt to make clearer to anyone who is interested what will be discussed at public meetings. The County should be commended for that, for by doing so the Commission is going beyond what the letter of the law requires. Every citizen of the county is well served by that decision. Likewise, those who have raised the issues underlying this investigation should be commended for having done so as the verbalization of their concerns has led to the good result of that increased openness on the County's part. Otherwise, I can only say that having spent something exceeding one hundred hours on this inquiry nothing has been uncovered that is illegal. Some may wish to say that even though the letter of the law has been complied with, if the spirit of the law has not then something should be done. Assuming that to be so, whatever that "something" might be cannot occur in the criminal courts, at least not in these circumstances.